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September 12, 1994

Mr. Patrick Donovan  
Cable Services Bureau  
Federal Communications Commission  
1919 M St., NW

Washington, DC 20554

Dear Mr. Donovan:

As the Executive Vice President of the Home & Garden Television Network (HGTV), I have been following closely the Commission's efforts to implement the 1992 Cable Act. I have been particularly interested in the "going-forward" rules, as these rules have a substantial effect on a new programming service such as HGTV. While I realize that the Commission recently solicited comment on the going-forward rules and that the comment deadline has expired, I am sending you this letter to offer my perspective on how those rules have affected all of us at HGTV.

In brief, the going-forward rules discourage operators from including HGTV on their expanded basic tiers. Unless the Commission adopts an approach that offers cable operators sufficient incentives to carry lower-cost programming, cable subscribers will be denied access to quality programming such as HGTV. At the same time, the Commission must clarify its a-la-carte policies, and relax its consumer complaint rules, as these provide additional disincentives for cable operators seeking to carry new programming.

### **Background**

HGTV, which has been in development for over three years, is a 24 hour network covering all aspects of home-- inside and out. The overall categories of programming include repair/remodeling, gardening, decorating and hobbies/crafts.

Business and social trends point to a growing interest and need for HGTV in today's world. The home is one of today's few sacred institutions. People are spending significant and growing amounts of their income on home and garden-related activities.



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The areas to be covered by HGTV represented over \$260 billion in sales in 1993, with over \$108 billion devoted to remodeling alone. According to a July 18, 1994 Wall Street Journal article, the amount of money spent on remodeling is expected to top the amount spent on new home construction by the year 2000. Even further evidence of America's interest in the topics to be covered by HGTV is indicated by purchase and readership patterns of home-related magazines. The Home Services category is the second largest magazine category in existence today, with over 28 million readers of the top eleven Home Services magazines.

Our national and local community research comparing HGTV to other cable networks has shown that consumers consistently place HGTV among the top four programming services-- even in comparison with established and running networks. Yet no television network dedicated to this topic has existed. We will change that with our launch of HGTV later this year.

HGTV is owned and backed by Scripps Howard, a billion dollar company with over 125 years' experience in media. The E.W. Scripps Company also operates 19 daily newspapers, cable systems (with 718,000 subscribers), and nine television stations. In addition to HGTV, the Company's emerging entertainment division includes Knoxville-based Cinetel Productions, an award-winning producer of both cable and broadcast programming, Los Angeles-based Scripps Howard Productions and United Media, a leading licensor and syndicator of news features and comics, including "Peanuts."

### **The Current Rules Harm HGTV**

Even though HGTV fills a real and demonstrated programming need, and subscribers are enthusiastic about the Network, the FCC's going-forward rules have placed tremendous obstacles in our path to success.

Cable operators acknowledge HGTV will provide added value to their lineups, and have commented specifically that our service has broad enough appeal to warrant carriage on their lineups. They also have commented specifically that our service has broad enough appeal to warrant carriage on their expanded basic, or cable programming service, tier. Operators without existing agreements, however, are unwilling to add HGTV to their expanded basic lineups at this time. We contacted over 20 operators in the past two months, and each operator commented that the current rules permitting only a 7.5% markup for new services provide no financial incentive for carriage of HGTV on expanded basic. They stated that all new services will be added on an a-la-carte basis.

We have discovered that, as a result of the going-forward rules, cable operators are showing heightened interest in programming such as pay-per-view, premium TV and home shopping services that guarantee higher revenue to the operator. In fact, six cable operators told us that they will next add adult pay-per-view channels. The need for alternative revenue sources is understandable given the Cable Act's impact on operator margins, but the outlook for cable lineups is bleak if operators across the country follow

this pattern. We assume, and surely hope, that the FCC's rules were not intended to promote the growth of adult pay-per-view services at the expense of other programming.

We believe that HGTV would be embraced by the cable community and added to the expanded basic, even in place of current services with marginal appeal, were it not for the going-forward rules. Cable operators recognize the onslaught of competition from all sources and have been extremely active in consumer research to gauge community interests. Even though consumer interest in HGTV has been high, operators just cannot make enough money from the channel.

The going-forward rules will result in further entrenchment of current program providers, such as Turner, Rainbow and others. These companies have very low break even margins relative to subscriber counts, and can survive, even profit, on tiers. They can also strike more aggressive deals to secure distribution. Companies with new, great programming ideas will find it impossible to compete against these advantages.

The lack of clarity of the a-la-carte rules has also harmed new services. Given technical constraints, in most instances a new service such as HGTV would need to replace an existing expanded basic channel. Dropping even a marginally popular channel is usually not an option for cable operators, as operators have long recognized that virtually any service satisfies some segment of the community. At the same time, the current interpretation of a-la-carte rules effectively prohibits the movement of programming from expanded basic to a-la-carte. As a result, potentially marginal programming remains on expanded basic tiers, blocking opportunities for new channels to enjoy expanded basic distribution. As we have said, the cable operators we contacted recently all said that HGTV would be carried only as a future a-la-carte service.

It's hard to imagine how new services with respectable program quality will survive on a-la-carte tiers alone. Our analyses demonstrate that HGTV requires a certain amount of expanded basic tier carriage to approach the economies of scale advertisers are seeking. Any similar new service likely faces the same dilemma. While incumbent program providers may be able to make a meaningful business out of a-la-carte-only carriage, we would hope the FCC wants to maximize the field of content providers.

Even if operators could replace channels, the consumer rate complaint rules discourage operators from doing so. Any time there is a rate change--even a rate decrease--subscribers can file rate complaints. Substituting channels with different costs could also trigger complaints. Operators are very reluctant to risk the time and cost associated with addressing such complaints.

Addressing the pass-through incentive and tying license fees to percentages, rather than permitting flat fees, gives cable operators an incentive to offer high cost services over moderate and low cost services. This is consumer unfriendly and harmful to new and low cost services.

## **Solutions**

The FCC should adopt some minimum flat fee cable operators could realize from providing new programming. We were distressed to read press reports indicating that the FCC has rejected the \$.25/1.50 recommendation advanced by the NCTA. The NCTA proposal offered the clear advantage of placing all programming providers on essentially an equal playing field. That proposal provided enough profit margin, on average, to spark interest in HGTV. We contacted various cable operators, and over half of the calls netted serious launch interest-- on expanded basic-- based on the NCTA proposal.

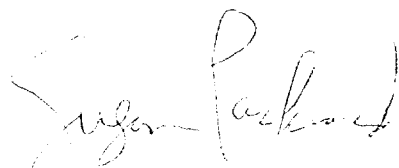
At the same time, the FCC must clarify its a-la-carte rules so that cable operators will be willing to move services off existing tiers to make room for new services. Furthermore, the FCC should relax its consumer complaint rules so that an operator's entire rate structure will not be in jeopardy following minor programming changes.

## **Summary**

Consumers have been voting for HGTV in national and local research. Cable operators, cognizant of serving subscriber needs, have been very high on HGTV and all that we deliver. They acknowledge there is nothing else on their lineups today that delivers this category of sought-after programming.

In a world not fraught with regulation, we believe that HGTV would earn expanded basic distribution. Now, however, we are deeply concerned that HGTV will be relegated to a-la-carte tiers. We are more fortunate than most in that HGTV has a healthy level of funding compared to other new services, yet we still fear the harmful effects of regulation. All new services face monumental hurdles to success, but as the rules exist today, few services will make it.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Susan Packard".

Susan Packard  
Executive Vice President